

REMARKS/ARGUMENTS

Applicant cancelled claims 1-56 and 131-145; amended claims 57-59, 61-69, 71-73, 76, 77, 94, 113-120, 146-154, 158, 161, 162, 175-185, 189, 190, 203-205, 207-215, 217-219, 227-230, 232, and 233; and added new claims 244-259 to further define Applicant's claimed invention. Support for new claims 244-259 is found in the specification at least on page 14, line 12 to page 16, line 17 and Figs. 16-19A. Support for the changes to claims 57-59, 61-69, 71-73, 76, 77, 94, 113-120, 146-154, 158, 161, 162, 175-185, 189, 190, 203-205, 207-215, 217-219, 227-230, 232, and 233 is found in the specification at least on page 14, line 12 to page 16, line 17 and Figs. 16-19A. New claims 244-259 read on Group I, Species 4, Figs. 16-19A.

In the Office Action, the Examiner allowed claims 203-237. Applicant amended independent claim 203 to replace "first plurality of bone engaging structures" with "a first and a second surface projection;" to replace "second plurality of bone engaging structures" with "a third and a fourth surface projection;" and to replace "third plurality of bone engaging structures" with "a fifth and a sixth surface projection." Applicant also amended claim 203 to further define the opposed side facets of the first and second surface projections as left and right forward side facets. Applicant amended dependent claims 204, 205, 207-215, 217-219, 227-230, 232, and 233 for consistency with claim 203 as now amended. No new matter has been added.

The Examiner objected to Applicant's amendment dated August 15, 2002 under 35 U.S.C. § 132 as introducing new matter. Applicant respectfully traverses the Examiner's objection. Applicant submits that support for the amendment to the

paragraph bridging pages 14 and 15 is found at least in claim 60 as originally filed and Fig. 19A (for example, projection 422, rearward facet 426). Support for the amendment to the first full paragraph on page 15 is found at least in claims 155-158 as originally filed and Fig. 19A (for example, projection 460). Support for the amendment to lines 5 and 6 of the second full paragraph on page 15 is found at least in claims 185 and 186 as originally filed and Figs. 17 and 19A (for example, projection 470, facet 476). Support for the amendment to lines 6-8 of the second full paragraph on page 15 is found at least in claim 184 as originally filed.

MPEP § 2163 (I) states that “[l]t is now well accepted that a satisfactory description may be in the claims or any other portion of the originally filed specification.” (MPEP § 2163(I), page 2100-159, col. 2 (February 2003)). MPEP § 2163(II)(A)(3)(a) states that “[a]n applicant may show possession of an invention by disclosure of drawings or structural chemical formulas that are sufficiently detailed to show that applicant was in possession of the claimed invention as a whole.” (MPEP § 2163(II)(A)(3)(a), page 2100-161, cols. 1 and 2 (February 2003)). Accordingly, Applicant submits that the amendments to the specification in the Amendment of August 15, 2002 are fully supported.

Upon review of the elected claims, Applicant noticed that the subject matter of claim 184 is not drawn to the elected species. Applicant amended claim 184 to now read on the elected species. Even though claim 184 has been amended, Applicant submits that the amendment dated August 15, 2003 to lines 6-8 of the second full paragraph on page 15 of the specification is fully supported by claim 184 as originally filed and is not new matter. Applicant reserves the right to claim the subject matter of

original claim 184 in claims directed to the non-elected species. Applicant submits that the objection under 35 U.S.C. § 132 has been overcome.

The Examiner rejected claims 57-108, 114-120, 146-200, and 238-243 under 35 U.S.C. § 102(e) as being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 6,258,125 to Paul et al. in view of U.S. Patent No. 6,174,334 to Suddaby; U.S. Patent No. 4,944,763 to Willert et al.; U.S. Patent No. 5,899,941 to Nishijima et al.; or WO 98/58604 to Tsitsopoulos.

Independent claims 57, 146, and 175 as now amended recite an interbody spinal implant having a plurality of surface projections that include “at least a first and a second surface projection each having a first facet configuration,” the first and second surface projections “each having a peak along a first line that is transverse to the mid-longitudinal axis of said implant,” and “at least a third and a fourth surface projection each having a second facet configuration,” the third and fourth surface projections “each having a peak along a second line that is transverse to the mid-longitudinal axis” where the first and second facet configurations are different from one another. None of the references cited by the Examiner, whether alone or in proper combination, teach or suggest an implant having surface projections as recited in independent claims 57, 146, and 175.

The Examiner contends that a “longitudinal axis” can be “the longest axis measured between opposite corners of the implant.” (See, Office Action, page 3, second full paragraph). Applicant respectfully disagrees with the Examiner’s interpretation of the phrase “longitudinal axis.” Nonetheless, Applicant has amended

claims 57, 146, and 175 to recite a "mid-longitudinal axis" that passes "through the leading and trailing ends" of the implant.

Applicant submits that independent claims 57, 146, and 175 are allowable over the cited art and that dependent claims 58-119, 147-174, 176-202, and 238-258 dependent from one of independent claims 57, 146, and 175, or claims dependent therefrom are allowable at least due to their dependency from an allowable independent claim.

In view of the foregoing remarks and amendments, it is respectfully submitted that the claims, as amended, are patentable. Therefore, it is requested that the Examiner reconsider the outstanding rejections in view of the preceding comments. Issuance of a timely Notice of Allowance of the claims is earnestly solicited.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this reply, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 50-1066.

Respectfully submitted,

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